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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re:

INCREDIBLE AUTO SALES, LLC,

Debtor.

Case No. 06-60855-RBK

Hon. Ralph B. Kirscher

**OBJECTION TO DEBTOR'S EMERGENCY MOTION AS TO USE CASH
COLLATERAL PURSUANT TO 11 USC SECTION 363 OF THE
BANKRUPTCY CODE**

Creditor in interest, Manheim Services Corporation d/b/a South Seattle Auto Auction ("Auction"), by and through its undersigned counsel, respectfully submits this Objection to Debtor's emergency motion to use cash collateral (Document No. 17), as follows:

1. Background.

On October 17, 2006, Incredible Auto Sales, LLC ("Debtor"), filed a voluntary petition under Chapter 11 of Title 11 of the United States Code. Debtor has since remained in possession of its property and continues to operate its new and used car

dealership in Billings, Montana.

On or about September 13, 2006, Debtor bought five vehicles at Auction. *See Auction's Motion for Temporary Restraining Order and Order to Show Cause in Adv. Proc. No. 06-00120, Document No. 3 ("Doc. 3")*. On or about October 4, 2006, Debtor bought another five vehicles at Auction. *Id.*

On October 5, 2006, the checks Auction received from Debtor for the vehicles it purchased on September 13, 2006 were deposited and returned to Auction with a notification of non-sufficient funds. *Id.* Auction never received proceeds from Debtor for the vehicles Debtor purchased on October 4, 2006. *Id.*

On October 17, 2006, Auction received notice that Debtor had filed a petition for Chapter 11 Bankruptcy. *Id.* On the same day, Auction sent an immediate notice of reclamation of the vehicles purchased on September 13th and October 4th. *Id.*

The Court granted Auction's motion for a temporary restraining order on October 26, 2006, at 9:10 a.m. (*Adv. Proc. No. 06-00120, Document 4*), which prohibits Debtor from encumbering, selling, transferring, trading, or disposing of in any manner the ten vehicles described in Exhibit A of Doc. 3, and compelling the Debtor to insure Auction as loss payee for the vehicles. Pursuant to the Court's order, Auction filed its injunction bond today, October 27, 2006 (*Adv. Proc. No. 06-00120, Document No. 6*).

2. Objections

Debtor's motion would interfere with Auction's already acknowledged 11 U.S.C. 546(c) right of reclamation. According to Exhibit B attached to Debtor's motion, at least seven out of the ten vehicles (Stock Nos.: p4072; p4077; P4112; P4113; P4114; P4115;

P4116) subject to Auction's right of reclamation and the Court's temporary restraining order are still in Debtor's possession ("Vehicles").

If Debtor's motion were granted, every vehicle in Exhibit B could be sold or otherwise disposed of in the course of business. Auction objects to Debtor's motion in that it interferes with Auction's right of reclamation to the Vehicles prior to final resolution of Auction's adversary complaint and that it violates the Court's temporary restraining order.

Additionally, the value of the Vehicles range from \$60,000.00 to \$70,000.00, which is a small component, or about 3 percent, of Debtor's overall \$2,209,868.42 inventory. *See Debtor's Motion 5:19, Doc. 17.* Restraining Debtor's use of the Vehicles will not substantially impact the Debtor's ability to operate its dealership during Chapter 11 reorganization.

Moreover, Debtor alleges that secured lender, Hyundai Motor Finance, is oversecured by approximately \$616,620.42. *See Debtor's Motion 3:10, Doc. 17.* Thus, Hyundai Motor Finance is similarly unaffected by Auction's right of reclamation since they are, according to Debtor, oversecured by more than eight (8) times the value of the Vehicles subject to Auction's right of reclamation claim.

Finally, Auction is not a floorplanner for this Debtor but rather an unpaid seller located out-of-state over 800 miles from Debtor's lot. As such, Auction is not in a position to monitor Debtor's activities, the status of Auction's cars, and any proceeds thereof, whether cash or replacement inventory. Thus, Auction would be unduly prejudiced by an order allowing Debtor to use Auction's cars in its reorganization efforts.

CONCLUSION

For the foregoing reasons, the Court should deny Debtor's motion. If, however, the Court grants Debtor's motion, Auction requests that the Court's order exclude the Vehicles subject to Auction's right of reclamation and subject to the Court's temporary restraining order, so that Debtor is not allowed to sell Auction's vehicles.

DATED this 27th day of October, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that, on October 27, 2006, a copy of the foregoing document was served on the following persons by the following means:

1, 2, 3, 4 CM/ECF

_____ Hand Delivery

5 Mail

_____ Overnight Delivery Service

_____ Fax

1, 2, 3, 4 E-mail

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